

CONCESSIONS OR GRANTS, CAPE NOME, ALASKA.

LETTER

FROM

THE SECRETARY OF WAR,

IN RESPONSE

TO RESOLUTION OF THE SENATE OF MARCH 21, 1900, RELATIVE
TO ALLEGED CONCESSIONS OR GRANTS MADE TO EXCAVATE
THE GOLD-BEARING BED OF THE SEA AT OR IN THE VICINITY
OF CAPE NOME, IN ALASKA.

MARCH 23, 1900.—Referred to the Committee on Public Lands and ordered to be
printed.

WAR DEPARTMENT,
Washington, March 23, 1900.

To the Senate of the United States:

I have the honor to reply to the following resolution of the Senate,
dated March 21, 1900:

Resolved, That the Secretary of War be directed to inform the Senate whether any
concessions or grants to excavate the gold-bearing bed of the sea at or in the vicinity
of Cape Nome, in Alaska, or in other Alaskan waters, has been made to any individual
or individuals, or to any corporation or association of individuals, by the Secretary of
War, or by any other official of the War Department, and, if so, to inform the Senate
upon what theory of power or authority, if any, such concessions or grants were made.

No concessions or grants to excavate the gold-bearing bed of the sea
at or in the vicinity of Cape Nome, in Alaska, or in other Alaskan
waters, have been made by the Secretary of War or any other official
of the War Department. Numerous applications have been received
by the War Department for permits to excavate in the bed of the ocean
in the vicinity of Cape Nome, in Alaska, in the exercise of the authority
conferred upon the Chief of Engineers and the Secretary of War by
section 10 of the act of Congress approved March 3, 1899, which pro-
vides:

*** It shall not be lawful to excavate or fill, or in any manner to alter or modify the
course, location, condition, or capacity of any port, roadstead, haven, harbor, canal,
lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the
channel of any navigable water of the United States, unless the work has been recom-
mended by the Chief of Engineers and authorized by the Secretary of War prior to
beginning the same.

Section 12 of the same statute makes it a criminal offense to exca-

vate without the required authority, however lawful the work may otherwise be, and provides that the offender "on conviction thereof shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment not exceeding one year, or by both such punishments, in the discretion of the court." As this statute was designed solely for the protection of navigation, it has been the practice of the War Department to grant permits to persons desiring to excavate for any purpose when the work is not such as to injuriously affect navigation and is otherwise lawful. Permits thus granted are not exclusive; they do not preclude any number of similar permits applicable to the same territory; they are not grants or concessions, and they confer no rights whatever except immunity from prosecution under the statute above quoted secured in accordance with the terms of the statute and by reason of a compliance with the provisions thereof.

As there seems to be no legal reason why all citizens of the United States should not have the same opportunity to prospect for gold and acquire mining rights under the mining laws upon land under water as they have upon lands not under water, the Department determined, as a general policy in the exercise of the discretion vested in the Chief of Engineers and Secretary of War by this statute, to relieve all citizens applying from the obstacle interposed by this statute so long as their proposed operations do not in fact interfere with navigation. All applications made under this statute have accordingly, so far as it has been possible to dispose of them, received favorable action. No application of this description has been denied. Upon two permits have been granted. Upon a third papers have been prepared and were awaiting the Secretary of War's signature at the time of the passage of your resolution. Three others were approved by the Chief of Engineers and were in the hands of the Judge-Advocate-General for the preparation of the necessary papers. Eleven others are still in the office of the Chief of Engineers in process of examination upon the question whether they interfere with navigation. Four more just received are in the office of the Secretary of War, and will to-day be sent to the Chief of Engineers.

Unless otherwise directed by Congress, the Secretary of War will deem it his duty, in the exercise of the discretion vested in him by law, to grant permits in all of these cases and upon all other similar applications by citizens of the United States, provided that the work proposed does not injuriously affect navigation.

I annex hereto a copy of the form of permit prepared by the Judge-Advocate-General and used by the first two cases, and also an amended form which has been prepared by the Judge-Advocate-General for the Secretary of War's signature in the three cases mentioned, and which is being followed in the preparation of the papers in the other cases.

Very respectfully,

ELIHU ROOT,
Secretary of War.

[Form No. 5.]

Whereas by section 10 of an act of Congress, approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public work on rivers and harbors, and for other purposes," it is provided that it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead,

haven, harbor, canal, navigable river, or other water of the United States outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and "it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same;"

And whereas Mr. George Max Esterly, of Seattle, Washington, has applied to the Secretary of War for permission to excavate or fill within the following-described area in Bering Sea, near the mouth of Snake River, Alaska, commencing at a point 200 feet east of the junction of mean low-tide water on Bering Sea and the mean low water at the mouth and on the east bank of Snake River, which latter empties into Bering Sea about 12 miles a little north of west of Cape Nome, in Alaska; then extending along on the said mean low-tide line in a general westerly direction for a distance of 2 miles, and extending out 500 feet from the mean low-tide line, which work has been recommended by the Chief of Engineers:

Now, therefore, this is to certify that the Secretary of War hereby gives permission to said George Max Esterly and assigns to excavate or fill within the area described above in Bering Sea, near the mouth of Snake River, Alaska, upon the following condition:

That the work herein permitted to be done shall not interfere with navigation or the rights of riparian owners, and shall be subject to the supervision and approval of the commanding general, Department of Alaska.

Witness my hand this first day of March, 1900.

[SEAL.]

ELIHU ROOT,
Secretary of War.

[Form No. 5.]

Whereas by section 10 of an act of Congress, approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," it is provided that it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same;

And whereas F. S. Wood, of Alliance, Ohio, has applied to the Secretary of War for permission to excavate and fill within the following-described area in Bering Sea, near the mouth of Snake River, Alaska, commencing at mean low tide three (3) miles east of the mouth of Snake River, which latter empties into Bering Sea about twelve (12) miles a little north of west of Cape Nome, in Alaska; and from said point extending one (1) mile east along shore at mean low tide and extending out into Bering Sea five hundred (500) feet, thus covering a space of one (1) mile by five hundred (500) feet, which work has been recommended by the Chief of Engineers, subject to the condition hereinafter set forth:

Now, therefore, this is to certify that the Secretary of War hereby gives unto said F. S. Wood and assigns permission to excavate and fill within the area described above, it being understood that this instrument is simply a permission to excavate and fill under said act, and is not exclusive within said area, and that it may be withdrawn as to future work at the discretion of the Secretary of War.

This permission is given subject to the following condition:

That the work herein permitted to be done shall not interfere with navigation or the rights of riparian owners, and shall be subject to the supervision and approval of the commanding general, Department of Alaska.

Witness my hand this — day of March, 1900.

[SEAL.]

Secretary of War.

